

Planning & Zoning Commission Meeting  
Minutes of February 1, 2012  
1st Floor North Conference Room - City Hall

**Present:** Chairman Mark C. Brooks, Vice-Chairman Nathaniel Cannady, Kristy Carter, Jeremy Goldstein, Jane Gianvito Mathews, Holly P. Shriner and Paul Smith

**Absent:** None

**Pre-Meeting - 4:30 p.m.**

At the pre-meeting, the Commission discussed the content of the agenda items, the upcoming annual retreat, the use of Robert's Rules of Order, and the nature of what constitutes a conflict of interest.

**Regular Meeting - 5:00 p.m.**

Chairman Brooks called the meeting to order at 5:00 p.m. and informed the audience of the public hearing process.

**Administrative**

- ? Ms. Mathews moved to approve the minutes of the January 4, 2012, minutes with several typographical errors. This motion was seconded by Mr. Goldstein and carried unanimously by a 7-0 vote.

**Agenda Items**

- (1) **Review of the Conditional Zoning request for the project identified as Asheville Area Chamber of Commerce located at 36 Montford Avenue. The request seeks the rezoning from Community Business I District to Institutional District/Conditional Zoning to allow for a satellite graduate school campus. The owner is Asheville Area Chamber of Commerce and the contact is Austin Walker. The property is identified in the Buncombe County tax records as PIN 9649.11-5137. Planner coordinating review – Alan Glines**

Urban Planner Alan Glines oriented the Commission to the site location and said that in 2011, Lenoir-Rhyne University approached the Asheville Area Chamber of Commerce about using the third floor of the existing Chamber of Commerce Building to allow the University to offer graduate-level classes to the Asheville community. The Chamber is experiencing excess capacity in the building and agreed to sell the space. Lenoir-Rhyne University (LRU) would like to offer classes through a creative mix of on-site, distance/ on-line learning, operating in the evenings and on weekends. Occasionally there may be a special seminar or lecture with attendance of 100 or so participants using existing space in the Chamber building. Two hundred is the projected student enrollment for at least the first three years of operation but that number could be larger or smaller depending on the interest and growth of the programs offered. Projections provided by the University estimate that on any given evening up to about 25% of the enrolled students (about 50) are expected to be on campus. Fewer students are expected during summer sessions. Weekday evening classes begin at 5:30 p.m. and end around 8:30 or 9:30 p.m. A variety of weekend classes will be offered including Saturdays and Sundays as part of an accelerated course on weekends.

The Chamber of Commerce moved to its current location on Montford Avenue in 2000 after assembling properties on Montford Avenue, Hill Street, and Gudger Street and constructing a new office building and surface parking lot. The building totals about 33,000 square feet on three levels and is oriented to face Montford Avenue. The building was reviewed and approved

by the Historic Resources Commission when it was built. The all-brick building has a pedestrian orientation from Montford Avenue with windows and door facing the neighborhood.

The building is non-conforming in the CB I zone standards because of its size as buildings in the CB I zone are not allowed to exceed 12,000 square feet (or 6,000 square feet on two floors). This is because when the project was originally constructed, the Head of Montford Overlay applied to the site and this overlay allowed larger structures.

Parking and additional entrances are located at the rear of the building. The site has two access points, one directly from Montford Avenue and the other from Hill Street. There are 146 parking spaces as indicated on the site plans that have accompanied this conditional zoning proposal. According to submitted information the University use of these parking spaces will not overlap the primary daytime use and will not interfere with the recently authorized seasonal Wednesday Farm Market that serves the community in the lower area of this parking lot. The site is fully landscaped and meets the requirements for landscaping found in Article 11 of the UDO.

Existing Zoning: Community Business One (CB I) zone is intended to provide areas for medium density business and service uses serving several residential neighborhoods. The zoning area may serve as a workplace for nearby residents and be sensitive to significant pedestrian activity. Although the list of allowed uses in the CB I district is quite varied, institutional uses like universities are not permitted. Under the existing zoning the building is non-conforming based on scale of the structure which is not a particular concern but worthy of a mention.

Proposed Zoning: Institutional (Inst) zone is intended for the development of major educational, medical and complimentary uses such as support offices and related services. While there are not maximum building size limitations or design related requirements, new construction follows normal review procedures which are dependent on the scale of the project.

The existing site development and building would both be conforming to the proposed Institutional Zone. Changing the zoning to *Institutional Conditional Zone* using the existing site plan and described uses and operation of the site as conditions for approval can protect the character of the community and provide specified limits on the use of the site.

#### Staff Analysis

The site is built out and no further site changes are proposed. There are 146 parking spaces arranged at the rear of the site. The existing 3-story building is 33,000 square feet built to accommodate a mix of uses, so the addition of the university activities will fit well into the existing layout and operation of the building and will occupy the third floor.

The Chamber of Commerce will continue its normal business development and meeting functions and the activities of the Asheville Visitor Center. The Chamber currently has 45 employees staffing both the Chamber operations and the Visitor Center. The Chamber offices are open from 8:00 a.m. until 5:00 p.m. Monday through Friday and the Visitor Center operates from 8:30 a.m. until 5:30 p.m. Monday through Friday. On weekends the Visitor Center hours vary slightly opening at 9:00 a.m. and closing at 5:00 p.m. The Visitor Center has special hours on weekends in October and closes at 7:00 p.m. instead of the usual 5:00 p.m.

Weekend staff coverage at the Visitor Center includes five people (made up of staff and volunteers). Across the year the bulk of the visits to the Visitor Center occur between the hours of 10:00 a.m. and 3:30 p.m. and the typical visitor stays for 15 minutes. In addition to the described Chamber uses, the seasonal Wednesday Farmer's Market which is popular with the neighborhood and visitors from other parts of the city also plans to stay and use the site. The market operates only on Wednesday afternoons and closes at 6:00 p.m. and generally operates between April and November.

The current uses of the site are most active during the middle parts of the day with visits to the Visitor Center tapering off after 3:30 p.m. along with visitor traffic to the property. There is a brief time however when there will be an overlap with Visitor Center patrons in the evenings after 5:00 p.m. and students who will arrive for their on-site classes which will start at 5:30 p.m. According to University officials, newer delivery methods for graduate-level classes require less 'face-to-face' time in the classroom and it is estimated that no more than 50 students or 25% of the enrolled student population (based on an enrollment estimate of 200 students) are anticipated to be on campus on any given weekday evening. As was noted before, the Visitor Center workers and visitors leave at 5:30 p.m. as well so there will be limited overlap with arrivals and departures but the existing 146 parking spaces on site will be enough to accommodate both user groups. Even if for example, there were 30 Visitor Center patrons parked in the parking lot and 20 Chamber staff still in the building at closing time at 5:30 p.m., there would be 96 available spaces for students arriving at the site for their classes. On weekends the Visitor Center is also open with five staff and volunteers and LRU will offer weekend courses to students. Again if 50 students were on-site for weekend classes and if the Visitor Center with 5 staff and volunteers and an additional 65 parking spaces were in use all day long by visitors there would still be 26 available parking spaces. The existing parking will accommodate the daily Chamber of Commerce needs and Visitor Center activity even with the students coming for evening and weekend classes because of the large number of existing parking spaces.

To ensure that University related traffic does not exceed intended levels of service for this location, staff recommends that if the University wishes to have enrollment exceed 300 students, that the parking again be reviewed. This is to ensure that the shared uses are successfully functioning together on the site. If that review warrants changes, staff will proceed accordingly.

This proposal was recommended for approval with conditions by the Technical Review Committee on January 3, 2012. There were very few comments with the exception from the Transportation Department that a bus shelter be constructed along Montford Avenue adjacent to the property.

Public comment on the topic has centered on potential traffic activity at Hill Street and Montford Avenue and the safety at the intersection. The Traffic Engineering Department has reviewed the existing roadway alignment and has not noted any needed changes to the intersection.

Members of the Montford Neighborhood Association have also expressed preliminary interest in having the entire property included in the Montford Historic District boundary. The Association feels that any future development on the site should be coordinated with the design standards of the district. If this is proposed, the Historic Resources Commission would review the map amendment request and vote to approve or disapprove the expansion based on the merits of the site and application. Staff is supportive of this review opportunity by the Historic Resources Commission but feels that this is a separate request which should **not** delay the conditional zoning application.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

**1. That the proposed use or development of the land will not materially endanger the public health or safety.**

The proposed project has been reviewed by City staff and appears to meet all public health and safety related use and activity on the property.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

The project is using an existing site and no physical changes are proposed for the project site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

The proposed uses and the site are positive additions to the Asheville community and the immediate surrounding neighborhood. No negative impacts from the expanded use are expected.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

The site is already developed and the current building is in-scale with the surrounding neighborhood and area. The building was originally reviewed by the Historic Resources Commission to ensure compatibility with the goals of the neighborhood.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The site is already developed and the form of the building, which is multi-story with full access at street-level is designed to have a variety of possible uses ensuring its adaptability over time. The conditional zoning request is a successful example of a form-type of building adapting to a major change of use from its original purpose. By definition this is sustainable development.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

The site is located at the intersection of Montford Avenue and Hill Street is well positioned for convenient access to transportation options. I-240 is immediately adjacent to the property and both Montford Avenue and Hill Street are served by Asheville Transit System Route 11 and a bus shelter has been requested for Montford Avenue as a part of the Technical Review Committee review. All other aspects of site infrastructure are in place to handle the existing and proposed uses.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The subject project will not adversely impact the surrounding street network from a traffic engineering perspective. The proposed new use is primarily an evening and weekend use that is not expected to create undue traffic congestion for the surrounding area.

Based on the above findings and the analysis provided in the report, staff finds this request, with conditions noted, to be reasonable.

Pros:

- ? Allows a new educational partner to expand opportunities for the local work force.
- ? Permits an existing site to be more fully utilized without creating undue impacts on the surrounding community.
- ? Ensures the future relevance of an existing underutilized structure by permitting a new activity with minimal changes to the interior of the building.

Con:

- ? Brings more activity to the site and neighborhood than has been there especially during the evenings and on weekends (a potential pro).

Staff recommends approval of the project with the existing uses and the proposed educational use with a student enrollment of up to 300 students subject to the operation standards submitted by the applicant and requirements of the TRC report.

When Ms. Shriner questioned why the staff's recommendation was up to 300 students when the staff analysis was for 200 students, Assistant Planning & Development Director Shannon Tuch said that staff wanted to give them some room to grow and with the information from the analysis they felt they could project up to 300 students.

In response to Ms. Shriner, Mr. Glines said that the bus shelter along Montford Avenue adjacent to the property is recommendation from the Transportation Department that it be a requirement as the project moves forward.

When Ms. Mathews wondered if it would be better to approve a percentage of registered students on-site or a certain number that equates to the parking availability, staff agreed and changed their recommendation for approval with a student enrollment of up to 300 students (maximum on-site attendance of not more than 75 students at any given time), subject to the operation standards submitted by the applicant and the requirements of the TRC report.

Ms. Carter questioned if Lenoir-Rhyne moves out and the property is zoned Institutional/Conditional Zoning, are we opening this up for every Institutional District use. Ms. Tuch responded no, that this zoning is just for the purpose of having a graduate program on the site. It could be replaced by another graduate program but it would have to meet the same requirements.

Ms. Kit Cramer, President of the Chamber of Commerce, asked that they not be required to build a bus shelter on Montford Avenue for the following reasons (1) after talking with the University about how they expect their students to arrive, they anticipate the students will be professional adults and it is their expectation that most will be working and arriving by car; (2) the Chamber staff does not ride the bus; (3) the Chamber has vendors who sell tickets for trolleys; and (4) looking out the Chamber's windows reveal they don't see people waiting on a bus there. The estimate for constructing the bus shelter on Montford and bringing the bus stop on Hill Street into compliance with Americans with Disabilities Act (ADA) is between \$10-15,000. She asked the Commission to not make the constructing of the bus shelter a requirement of the conditional zoning.

Chairman Brooks opened the public hearing at 5:29 p.m.

Mr. David Patterson, President of the Montford Neighborhood Association, welcomed Lenoir-Rhyne to the neighborhood.

Mr. Michael McDonough, member of the Montford Neighborhood Association, also welcomed the educational use to the neighborhood. He said that there seems to be a creeping of more intense districts into the Montford neighborhood and although he understood the reasoning, he questioned if Institutional is the right classification for the site. He asked for confirmation that any physical change to the site go through the same review process. Also, there needs to be a traffic light facing Hill Street.

City Attorney Oast responded to Mr. McDonough that when the ordinance is drafted the approved site plan is made a part of the ordinance. Any substantial change (as defined in the Code) would require coming back through the conditional zoning process.

In response to Mr. Max Alexander about who polices the conditions, Ms. Tuch said that there are a number of ways staff is alerted to something being in non-compliance but generally through complaints.

City Attorney Oast noted that the law states only those conditions mutually approved by the City and the petitioner may be incorporated in the zoning permit requirement. If the applicant is unwilling to agree to a bus shelter, then it is possible the ordinance will not pass.

In response to Ms. Carter, Ms. Tuch said that a bus shelter is clearly needed, noting it is described in the Transit Master Plan. How much of that bus shelter use is from people visiting the Chamber property and how much is from the community she didn't know. But what we are seeing is that when a property continues to increase its impact, at some point there is a trigger that occurs, and we feel the trigger is the addition of these students and the additional activity at night. In addition, Montford does have a night-time bus route. There's an expectation that people won't ride the bus, but we don't know how this might change in the future.

When Ms. Mathews asked for other examples of projects where bus shelters were required, Ms. Tuch said that the City requires bus shelters on big box retails, and when we can identify a need for one. She said that she would be happy to e-mail the Commissioners other projects.

In response to Ms. Shriner, Ms. Tuch said that the bus shelter request is on Montford (main transit line) and on Hill Street is just to improve the existing bus stop to meet ADA requirements which is just a concrete pad. Between the two, the bus shelter on Montford is clearly the highest priority.

At 5:42 p.m., Chairman Brooks closed the public hearing.

In response to Mr. Goldstein regarding parking, Ms. Tuch said that if there was a large event being held on the property, there are different standards special short-term events.

When Vice-Chairman Cannady felt we may be over-managing them if we are limiting them to 75 students at any given time, Ms. Tuch responded that these numbers were supplied by the applicant. She said that when it comes to conditional zoning it is very beneficial to put a cap on things, particularly when it's a use like this.

Mr. Smith asked if the City had any financial responsibility for the bus shelter since other residents of the City would be using it, not just Montford residents or Chamber visitors. Mr. Glines said that through the budget process the City is making expansions to the transit service and adding shelters throughout the City as identified on the Transit Master Plan. But when there is a change to a site, it is appropriate to ask for a bus shelter at that time. Ms. Tuch also noted that the City's responsibility for bus shelters is maintenance in perpetuity, i.e., replace windows when broken, replace benches when damaged, etc., and that does come with a cost. The City's responsibility is also to look forward and anticipate the community's needs and figure out where there are opportunities to get these needs met.

Ms. Mathews said that there is a history of requesting petitioners to install bus shelters.

Based on the above findings and the analysis provided in the report, Ms. Mathews moved to recommend approval to rezone 36 Montford Avenue from Community Business I District to Institutional District/Conditional Zoning to allow for a satellite graduate school campus with a student enrollment of up to 300 students (maximum on-site attendance of not more than 75 students at any given time), subject to the operation standards submitted by the applicant, and subject to the following conditions (1) The project shall comply with all conditions outlined in the TRC staff report; (2) Changes to the site that expand the uses may require review by appropriate bodies; (3) Any alterations to the interior of the building and additional signage may require

permits by separate application; and (4) If the University wishes to expand enrollment potential above 300, a traffic analysis will be required. This motion was seconded by Ms. Carter and carried unanimously by a 7-0 vote.

Ms. Mathews then moved to ask the Historic Resources Commission review the map amendment of having the entire Chamber of Commerce property included in the Montford Historic District boundary and vote to approve or disapprove the expansion based on the merits of the site and application. This motion was seconded by Mr. Goldstein and carried unanimously on a 7-0 vote.

**(2) Review of the Level II site plan for the project identified as Historic Biltmore School located on Vanderbilt Park Drive for renovation and addition to the existing structure for use as offices. The property owner is Biltmore School Development, LLC and the contact is Bryan Moffitt. The property is identified in the Buncombe County Tax records as PIN 9647.75-2700. Planner coordinating review – Nathan Pennington**

Urban Planner Blake Esselstyn oriented the Commission to the site location and said this project represents a Level II site plan review for a renovation and addition to the former Biltmore School building for a proposed office and medical office use.

The subject property consists of a 3.83 acre tract zoned INST and a 60,912 square foot building (3 stories) that once housed a school. While the building has been home to offices in the past, it has been vacant for a number of years. Access to the site is located approximately in the middle of the property along Vanderbilt Park Drive with an additional egress point located near the intersection of Vanderbilt Park Drive and Hendersonville Road. The existing parking field (located to the side of the building) will be upgraded to accommodate required landscaping and will include 244 spaces.

Primarily the renovation will consist of substantial interior work. The Building is currently 56,000 square feet and it will be going to approximately 61,000 square feet. There will also be additional parking. He noted the existing access will be modified and aligned so that it is entirely on the applicant's property and not on the adjoining property.

The property is located at 4 Vanderbilt Park Drive in south Asheville along Hendersonville Road. The subject property is bounded by multiple offices to the north separated by Vanderbilt Park Drive zoned INST, vacant property to the east zoned INST, single-family residences to the south zoned HB and property within the jurisdiction of Biltmore Forest, and vacant property to the west within the jurisdiction of Biltmore Forest.

The Technical Review Committee approved this project at their January 3, 2012, meeting.

In response to Ms. Mathews, Mr. Brian Moffitt, architect for the project, said they do have an easement construction agreement with the adjacent property owner.

Chairman Brooks opened the public hearing at 6:02 p.m. and when no one spoke, he closed the public hearing at 6:02 p.m.

Based on the above findings and the analysis provided in the report, Ms. Shriner moved to recommend approval of the project identified as the Historic Biltmore School for renovation and addition to the existing structure for use as offices, subject to the following conditions (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3)

All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Ms. Carter and carried unanimously by a 7-0 vote.

**(3) Continuation of discussion regarding ordinance amending Article 13, Chapter 7 of the Code of Ordinances of the City of Asheville to discuss options for amending the digital billboard standards**

Chairman Brooks said that a question has been raised regarding a potential conflict of interest on his participation with the wording amendment regarding digital billboards. He disclosed that he has a partial ownership of a building that has a non-digital billboard on it (which was there when the building was bought). After discussing this with the City Attorney, it was the City Attorney's opinion that there is no conflict of interest. However, for the sake of transparency, Chairman Brooks asked if a Commission member would like to make a motion to recuse him from participating in this matter.

City Attorney Oast said that when you are acting as an advisory body the law prohibits a member from voting if they have a direct, substantial and readily identifiable financial interest in the matter under consideration. After speaking with Chairman Brooks, he did not feel that it reaches the level of recusing him from voting. The billboard on his property is not a digital billboard and that is what is under consideration by the Commission. Having said that, it is the Commission's decision. The rules applicable to this Commission allow for a motion to be made and a vote to be taken.

Ms. Mathews said she did not think Chairman Brooks has any ethical issues but she did think there is a perception that a static billboard is still a commodity that is a barter for where and how digital billboards happen in Asheville as it currently stands. Not to reflect on Chairman Brooks personally, but she moved to recuse Chairman Brooks from participating in this matter. This motion was seconded by Ms. Carter, who agreed with Ms. Mathews.

When Mr. Goldstein asked Chairman Brooks if he has been approached by anyone to trade his billboard for a digital billboard, he replied no.

Mr. Goldstein said the law states "direct, substantial and readily identifiable financial interest" and is specific; but if you broaden the intent too much, no one would be able to serve on the Commission. He feels the law is clear.

When Vice-Chairman Cannady asked for a vote on the motion made by Ms. Mathews and seconded by Ms. Carter, it failed on a 2-4 vote, with Vice-Chairman Cannady, Mr. Goldstein, Ms. Shriner and Mr. Smith voting "no." (Chairman Brooks did not participate in the vote.)

Assistant Planning & Development Director Shannon Tuch said that over the last several months, interest in a collection of sign code amendments has grown and been intermittently discussed amongst staff and the Planning & Economic Development Committee and the Planning & Zoning Commission. A digital billboard installed on Merrimon Avenue within the past few months, and one more recently installed on Tunnel Road, have prompted substantial discussion in the community regarding appropriateness and compatibility of this new technology, especially along certain narrower corridors. The purpose of this amendment is to adjust these standards to better ensure compatibility.

The City of Asheville has had sign regulations since 1977 and has gone through a variety of amendments over the years, including a relatively significant amendment in 2004 that limited



billboards to certain corridors in the City per a legal agreement with the two largest outdoor advertising companies (Lamar and Fairway). This agreement was prompted both by interest in the community to limit billboards but also by state legislation that severely restricted a municipality's ability to amortize (eliminate over time) existing billboards. This 10-year agreement included the removal of 10 very high profile billboards along with the support for new standards that would cap the total number of billboards to those that currently existed and would not allow new boards to be added to the inventory, except through annexation. These existing boards would be documented and registered but would be limited to specific corridors. This existing inventory of billboards was to be maintained and could also be recombined, removed, replaced, and relocated per the new separation and spacing requirements outlined in the new ordinance – these are the standards that are commonly referred to as the “Cap and Replace” ordinance.

More recently in 2008, the City was approached with a request to allow digital billboards in exchange for removing older static billboards. While there was significant discussion on this issue (both for and against), the request was ultimately accommodated through an amendment that established new standards specific to the digital technology but would also have to comply with the standard billboard requirements – this included limiting any newly recombined/relocated boards to those corridors specified in the original ordinance. Since 2008, eight new digital billboards have been installed, including one on Merrimon Ave. in North Asheville. The Merrimon Ave. billboard has raised significant concern within the community primarily due to its proximity to existing residential style buildings and its proximity to the edge of the road. The placement of this billboard causes it to have a more looming presence which heightens long-standing concerns over a digital billboard's potential to distract motorists through the bright, changing image. Just within the past week, similar concerns have been expressed by the public regarding a newly placed digital billboard on the intersection of Tunnel Rd. and S. Tunnel Road.

Given the intensity of community concern over the new digital billboard on Merrimon Ave., staff thought it important to reexamine the standards regulating the digital boards to see if some adjustments could be made to help address these compatibility concerns. It is important to note that the original standards regulating traditional billboards cannot be amended without agreement from the outdoor advertising companies, or else risk violating the agreement that was accepted in 2004. This would not, however, extend to the new digital standards which were adopted without amendment to the original agreement. These standards could be amended to be more restrictive.

The analysis to understand what would need to change and why, proved interesting. Initially, staff concentrated on two basic standards: 1) separation from residential units, and 2) setbacks from the edge of pavement for corridors with a width of less than 75 feet. However, while adjusting these numbers would likely have the effect of limiting future billboards on narrow sections of the overlay corridors, it did not appear to address all of the concerns related to the compatibility of these signs on corridors such as Merrimon Ave. Upon closer review, it appears that it may be the general characteristics of the corridor itself that make it less suitable. These characteristics include:

- ? Fairly narrow right-of-way width of 60 feet
- ? Narrow view corridor
- ? No or very little shoulder between the edge of the travel way and the right-of-way line
- ? The number of cross streets
- ? The number of driveway cuts
- ? Back of curb sidewalks
- ? The size of the parcels fronting Merrimon
- ? The density of development
- ? Character of structures (smaller and more residential)
- ? The vertical curve of the road limiting visibility.

When these characteristics are considered in conjunction with one another, that corridor appears to have considerably higher opportunities for distracting interactions, along with other inherent challenges that contribute to the complexity of the driving environment that already exists. These two factors combined with aesthetic concerns related to the character of the N. Asheville community, appears to result in a greater level of discomfort related to the digital billboard. The only other corridors that exhibit somewhat similar characteristics (although not to as great an extent) are the segment of Tunnel Road just past the tunnel and portions of Sweeten Creek Road.

During the December 7, 2011, Commission meeting, staff recommended that a limited adjustment to the setbacks and separation requirements for narrower corridors be adopted – this would have had the greatest effect on Merrimon Avenue and portions of Sweeten Creek Road. An alternative option was also discussed that could combine this adjustment with a prohibition of digital billboards on certain corridor segments that meet these congested characteristics. A third alternative could be to elect to remove the digital billboard standards in their entirety. The impact of that change would be that no new digital billboards could be added anywhere in the City and those that existed would become non-conforming. After some discussion, the Commission asked that this amendment be continued to the January 4, 2011, meeting to provide the Commission and staff time to further explore the three options presented.

The billboard issue was presented as a discussion item during the January meeting where a significant amount of public comment was received and representatives from the outdoor advertising companies were invited to also speak on the subject. After much discussion, the Commission remained somewhat divided between eliminating the standards allowing digital billboards, versus strengthening the standards. Ultimately, the Commission chose to move forward with the option to adjust setbacks and spacing requirements while also eliminating certain corridors, or portions of certain corridors, from the overlay list for digital billboards. Staff continues to examine the corridors for specific characteristics but is currently proposing to remove Merrimon Ave. in its entirety from the overlay along with a segment of Sweeten Creek Rd. that is narrow and more residential in nature. Other suggestions may be proposed during the meeting for the Commission's consideration. In addition to the changes included in this wording amendment, the Commission also directed staff to continue with research strengthening the standards for digital billboards and to return with a more comprehensive amendment at a later date.

The following changes are the same that were brought to the Commission in December:

1. Setback proposed to be for digital billboards when located on corridors narrower than 75 feet. We recommend there be a 20 foot setback from the edge of the right-of-way or 50 feet from edge of pavement, whichever is greater.
2. Clarify that the spacing of the digital billboards is from all residential units and not just from residential buildings.
3. Re-printed in the ordinance the list where digital billboards may be relocated or reconstructed, with the deletion of Merrimon Avenue. In addition, she changed Sweeten Creek Road to be from Fairview Road to Rock Hill Road (removing the area beyond Rock Hill).

The other corridor there was concern about was Tunnel Road. When we were trying to understand the concern of the digital billboard on Merrimon we had identified certain characteristics about some of the corridors. In some cases it was because the corridor was very narrow, or because it was a very congested corridor, or residential in character. She did not remove Tunnel Road or any portion of Tunnel Road from this list, but acknowledged the concerns about the portion of Tunnel Road from the tunnel to S. Tunnel Road because of the amount of congestion. However, past I-240 on Tunnel Road becomes more open and wider and staff

doesn't have the same congestion concerns. She did not include the portion of Tunnel Road from the tunnel to I-240 because staff felt like corridors had to meet more than one test - in the case of Merrimon Avenue it's narrow and congested; Sweeten Creek is narrow and residential; but in the case of Tunnel Road, it meets only the test of congestion. She would leave Tunnel Road to the Commission's discretion on whether a portion of Tunnel Road should be included or removed.

Pros:

- ? Addresses compatibility concerns from residents and motorists while still preserving opportunities for off-premise advertising.
- ? Reduces potential for distractions in other already congested areas.

Con:

- ? Renders one existing billboard non-conforming.

City staff recommends approval of this wording amendment.

There was a brief discussion, initiated by Ms. Mathews, regarding the staff report and no mention of the specific statement in the 2025 Comprehensive Plan about no more billboards. She felt that by strengthening the standards, we are taking a pro-active approach to eliminating billboards in at least certain corridors. Ms. Tuch noted that the statement in the staff report aligns with one of five Council's Strategic Operating Plan goals, not the 2025 Comprehensive Plan.

Ms. Mathews was troubled that even with the distance from residential properties we will start to preclude the opportunity for residential development along these same corridors. We talk about the need to increase housing along these very same corridors, but having these standards that set digital billboards a distance from all residential, it starts pushing residential opportunities away from these corridors. Ms. Tuch said this would not preclude a residential structure from locating itself within the distance from the billboard. If that happens, it would render the digital billboard non-conforming.

In response to Mr. Goldstein, City Attorney Oast confirmed that whatever recommendation the Commission makes goes to City Council and they have the discretion to follow that direction or not.

Ms. Shriner confirmed that the ordinance before the Commission is one that strengthens the digital billboard standards and in the meantime staff will return in 6-12 months with a more comprehensive amendment.

Chairman Brooks opened the public hearing at 6:26 p.m.

Ms. Jane Northway, resident on Edgemont Road, asked if Chairman Brooks received money from Fairway for the lease of the billboard that is on his property. Chairman Brooks responded that he has in that the billboard contract was there when they purchased the building. Ms. Northway then quoted the City of Asheville Rules on Boards & Commissions which state that "No member of a board shall participate in the discussion or vote on any item involving their own official conduct or financial interest."

Ms. Northway then asked Vice-Chairman Cannady how many terms he has served on the Planning & Zoning Commission. She understood it was his third term and quoting from the City Council Rules on Boards & Commissions, it states "A term of service on all City boards shall be limited to three years or less, unless otherwise provided by law. The term of service on all boards and commissions shall be limited to two full successive terms (plus any unexpired term to which a member is appointed)." Vice-Chairman Cannady responded that at a time he lived in the City limits and was a City appointee. He then moved to the County and was appointed by the County Commissioners.

City Attorney Oast said that the ordinance does provide that members may not serve more than two terms. The statute regarding appointments of members by the County (because we have an extraterritorial jurisdiction) provides that the County shall make the appointment. He has researched the issue and to him it is not clear that the City, by ordinance, can tell the County who they can appoint. He said he is still looking into that, but at this point he did not think Vice-Chairman Cannady's participation is a legal problem.

Mr. Alan Escovitz, President-Elect of the Grove Park Sunset Mountain Neighborhood Association, member of the Coalition of Asheville Neighborhoods Executive Committee and member of the Asheville Billboard Coalition, said that the public is concerned that there may be a perceived conflict of interest for Chairman Brooks due to the fact that there was some financial benefit at the time of the purchase of the building and because the property can be swapped out as part of the formula for acquiring a digital billboard in a different location.

Ms. Betty Sharpless, neighbor on the Merrimon Avenue corridor, hoped we can completely eliminate digital billboards and keep Asheville unique.

Mr. Steve Farrow, resident on Delano Street, felt that reducing the number of corridors that digital billboards can be located on will pressure them into his neighborhood. He asked for a complete moratorium on digital billboards.

Ms. Leni Sitnick asked for the Commission (1) to consider a moratorium in order for staff to study all the impacts; (2) consider relocating the digital billboard on Merrimon Avenue; and (3) grandfather in existing digital billboards working towards removing digital billboard standards altogether.

Mr. Mike Lewis, north Asheville resident, felt we should avoid the appearance of a conflict of interest.

Mr. Bob Soule, Vice-President and General Manager of Lamar Outdoor Advertising, said that they support all the staff recommendations (setback, spacing from residential units, deletion of Merrimon Corridor and deletion of portion of Sweeten Creek Road Corridor). He cannot speak for Fairway; however, he did believe it is a good company and felt they might be willing to relocate the digital billboard. If the Commission institutes a moratorium, Fairway would not be able to relocate the digital billboard.

Ms. Coleen Dieterlie, employee for Fairway Outdoor Advertising, said that they are in favor of the proposed changes as set out by City staff.

Chairman Brooks closed the public hearing at 6:41 p.m.

Mr. Smith said that he and the rest of the Commission members have a lot of better things to do than volunteer their time in serving; however, they want Asheville to be a better place to live and work. He did not appreciate the comments directed toward Chairman Brooks.

Based on the above findings and the analysis provided in the report, Mr. Goldstein moved to recommend approval of an amendment to Chapter 7 of the Code of Ordinances to amend the digital billboard standards as outlined by Ms. Tuch. This motion was seconded by Vice-Chairman Cannady.

Ms. Mathews said that she would vote against the motion because she believes it goes against the 2025 Comprehensive Plan in many ways and without a moratorium it is worthless. As brought up, it pushes digital billboards into other areas and exacerbates what is a horrible problem in our City in terms of aesthetics and safety.

Mr. Goldstein felt this wording amendment allows some options and as such it may be possible that the Fairway might be willing to relocate the digital billboard on Merrimon Avenue and he views that as a positive step. Chairman Brooks agreed.

Ms. Mathews was opposed to all digital billboards. They are not contributing to the economic development of our community. There are multiple cities that have recognized that digital billboards are detrimental to their economic development. She hoped City Council will see that as it moves forward.

City Attorney Oast said that the law adopted in 2004 (N.C. Gen. Stat. sec. 160A-199) does allow for the City to negotiate individual relocation agreements. We don't just have to do it by ordinance noting we already have a cap and replace ordinance in place.

Ms. Shriner personally does not want to see any more digital billboards constructed and at some point she would like to see a digital billboard ban and just live with the ones we have. However, staff needs time to study the issues the Commission brought up. They will then report back to the Commission with legitimate reasons why they should be banned completely for safety or other reasons. Until then, she would support this wording amendment in hopes that staff will come back with an even stronger ordinance or recommendation to ban them completely.

Ms. Mathews would have completely agreed with Ms. Shriner had the Commission instituted a moratorium. That would have at least stopped anymore digital billboards until we could study the issue.

Ms. Carter too did not want any more digital billboards as that was the intent of the 2025 Comprehensive Plan. However, she does believe that until the Comprehensive Plan is amended that is what we have in place and we should follow that. She agreed with Ms. Mathews in that digital billboards do affect the long-term development and if Merrimon Avenue ever wanted to transition into something else, or another corridor where these are placed, it makes that transition more difficult from a land-use standpoint. There is no support in the community for digital billboards and she personally felt the Public Service Announcements are not value enough.

The motion made by Mr. Goldstein and seconded by Vice-Chairman Cannady and carried on a 6-1 vote, with Ms. Mathews voting "no".

### **Other Business**

Planning & Development Director Judy Daniel reminded the Commission of their Annual Retreat, which will be held on March 15, 2012, in Room 623 of the City Hall Building, beginning at 9:00 a.m.

Chairman Brooks announced the next meeting on March 7, 2012, at 5:00 p.m. in the First Floor Conference Room in the City Hall Building.

### **Adjournment**

At 6:55 p.m., Chairman Brooks adjourned the meeting.